REMARKS

Claims 1-23 are pending.

Claims 6-12 are objected to.

Claims 1-5 and 13-23 are rejected.

The office action dated August 25, 2006 indicates that claims 1-5 and 13-23 are rejected under 35 USC §101 for reciting non-statutory subject matter. The office action also indicates that claim 23 is rejected under 35 USC §103 as being unpatentable over Fitzpatrick in view of Drocourt.

On 17 November 2006, applicant's attorney Hugh Gortler discussed these rejections with Examiner Fred Ferris. To overcome the '101 rejection of claim 13, Examiner Ferris suggested amending claim 13 to include memory encoded with code that, when executed, causes a processor to apply a detection rule. Claim 13 has been so amended, and should now be allowable.

To overcome the '103 rejection of claim 23, Examiner Ferris suggested amending claim 23 to recite code that causes a processor to apply a detection rule to randomly-selected pixels. Claim 23 has been so amended. Examiner Ferris also indicated that claim 23 is drawn to statutory subject matter and, therefore, would not be rejected under section 101. Therefore, amended claim 23 should now be allowable.

To overcome the '101 rejection of claim 1, Examiner Ferris suggested amending claim 1 to recite an additional step such as storing or displaying the results of the detection rule in memory. He said adding such a step would satisfy Quality Control. If claim 1 did not recite this additional step, Quality Control would say the method did not produce a "tangible" result.

To overcome the '101 rejection of claim 1, claim 1 has been amended to move "identifying at least one predominant color in a digital image" from the preamble to the body. Claim 1 has also been amended in the manner suggested by the examiner.

The feature "storing the results ..." should not be needed to satisfy section '101. The feature "identifying the predominant color ...:" should be sufficient, since it produces a useful, concrete and tangible result. According to MPEP 2106, the purpose of the requirement for a useful, concrete and tangible result is "to limit patent protection to inventions that possess a certain level of 'real world' value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research." Finding a predominant color in a digital image is a useful, concrete and tangible result that has "real world value." For instance, knowledge of the predominant color has real world value for data compression.

Examiner Ferris is thanked for taking the time to speak with applicant's attorney. He is encouraged to contact applicant's attorney Hugh Gortler to resolve any issues that might remain.

Respectfully submitted,

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